

STATE OF MICHIGAN
COURT OF APPEALS

RONNIE T. ASMER,

Plaintiff-Appellant,

V

CENTRAL ILLINOIS BANK,

Defendant-Appellee.

UNPUBLISHED

August 23, 2005

No. 252973

St. Clair Circuit Court

LC No. 03-002357-CK

Before: Borrello, P.J. and Bandstra and Kelly, JJ.

PER CURIAM.

Plaintiff appeals of right the trial court's order granting summary disposition in favor of defendant. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff and defendant entered into a purchase agreement (agreement) where plaintiff agreed to purchase a motel from defendant. The effective date of the agreement was March 10, 2003. Pursuant to the agreement, plaintiff paid a \$50,000 "earnest money" deposit. The agreement also required that a demand for arbitration must be filed within three months of any alleged breach of the agreement. The property was never closed on and a dispute arose over the distribution of the earnest money deposit. Defendant filed a demand for arbitration on August 7, 2003, stating that it was entitled to one-half of the earnest money deposit for plaintiff's failure to close.

A trial court's ruling on a motion for summary disposition is reviewed de novo. *Klapp v United Ins Group Agency, Inc.*, 468 Mich 459, 463; 663 NW2d 447 (2003). Summary disposition is proper under MCR 2.116(C)(10) when there is no genuine issue as to any material fact. A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ. *West v General Motors Corp.*, 469 Mich 177, 183; 665 NW2d 468 (2003). Contracts must be construed, as far as practicable, to give effect to every word or phrase. *Klapp, supra*, 467. Whether contract language is ambiguous is a question of law that is reviewed de novo. *Id.*

Plaintiff argues that the trial court erred in finding that the demand for arbitration was timely filed. We disagree.

Article 7 of the agreement governs the parties' rights to the earnest money. Specifically, section 7.4 defines when and how the earnest money is to be divided:

Earnest Money. (1) *Notwithstanding anything in this Agreement to the contrary, if Purchaser fails to close this sale within 60 days of the Effective Date* for any reason other than Seller's default and Purchaser has not terminated this Agreement as provided within that 60 days, one-half of the Earnest Money or \$25,000.00 shall be considered then earned by Seller and non-refundable and payable to Seller and the same shall not be a credit to Purchaser if the sale subsequently closes; (2) if Purchaser closes this sale within 60 days of the Effective Date, the Earnest Money shall be a credit to the Purchaser; (3) if Purchaser and Seller through agreement close later than 60 days of the Effective Date, one-half of the Earnest Money or \$25,000.00 shall be a credit to the Purchaser; (4) if Purchaser timely terminates this Agreement within 60 days of the Effective Date, due to its elections during the Inspection Period, due to a breach of representations and warranties of Seller, as a result of a failure of any condition to closing as provided in Section 5.6 or as a result of any other default by Seller, the Earnest Money shall be returned to Purchaser; and (5) in all other instances in which this Agreement is terminated, Seller shall receive and retain the Earnest Money. [Emphasis added.]

Black's Law Dictionary defines a "breach of contract" as "[v]iolation of a contractual obligation, either by failing to perform one's own promise or by interfering with another party's performance." *Black's Law Dictionary*, 7th Ed. (1999), pg. 182. Here, the breach asserted by defendant is plaintiff's failure to disburse the escrowed earnest money. The effective date of the contract was March 10, 2003. The defendant's claim to the earnest money accrued when the plaintiff failed to close within sixty days of the agreement's effective date, i.e. May 9, 2003. Within three months, on August 7, 2003, defendant filed its demand for arbitration. The trial court did not err in finding that the arbitration demand was timely filed.

Plaintiff also argues the that other provisions of the agreement are ambiguous regarding the time for plaintiff to close on the property and any breach claimed was for the failure to close, not the failure to disburse the earnest money. We disagree. Defendant's demand for arbitration clearly sets forth a claim to the earnest money. Section 7.4 determines the date when the earnest money distribution would be triggered, "[n]otwithstanding anything in [the] agreement to the contrary..." Because the plain language of section 7.4 is unambiguous, the trial court did not err in granting summary disposition to defendant.

Affirmed.

/s/ Stephen L. Borrello
/s/ Richard A. Bandstra
/s/ Kirsten Frank Kelly